

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 379 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF R C MANKAD

BINDUMATI R MANKAD

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MRS. B.R. GAJJAR, ASSTT. GOVT.PLEADER for Respondent No. 1

SERVED for Respondent No. 2

MR HAROOBHAI MEHTA for Respondent No. 4(Absent)

MR J.D.AJMERA, for Respondent No.4 (Absent)

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 10/07/96

ORAL JUDGEMENT

The petitioner who is a retired Medical Officer
Class II, who died during the pendency of this petition

and is represented by his heirs, had sought a direction on the State of Maharashtra to assign deemed date of promotion to him in the Bombay Medical Service Class II, as if he was promoted on the date on which one Dr. R.B.Mahajan was promoted on 24th October, 1951 in view of the revised gradation list as on 1.11.1956.

The petitioner was, before the bifurcation of the State of Bombay, serving in the Bombay State from 10th June, 1948, in a Class III post. Thereafter, on formation of the State of Gujarat, he continued to serve in the State of Gujarat and retired as a Medical Officer EMS Class II with effect from August 17, 1970.

In the Bombay Medical Service Class III, the petitioner was shown at serial No. 414 in the gradation list as on 1.11.1956. However, that mistake was rectified and he came to be shown at serial No.138A of that list, by an order made by the Government of Maharashtra on 1.9.1970. On the basis of his revised seniority position, the petitioner was given deemed date of promotion in Gujarat Medical Service Class II as on 30th April, 1960, by an order which was issued on 5.12.1968.

The petitioner's case is that the Maharashtra Government ought to have decided the deemed date of his promotion on the basis of his revised position as at serial No. 138A of the gradation list of Bombay Medical Service Class III as on 1.9.1956. According to him, one Dr.R.B.Mahajan, who was recruited in service much after the petitioner and who was at serial No. 152 of the seniority list of Bombay Medical Service Class III was promoted to Bombay Medical Service Class II on 24th October, 1951 and therefore, the petitioner should have been given deemed date of promotion as on 24.10.1951, so that he would have been allocated to the Class II cadre on the formation of the State of Gujarat from 1.5.1960 and could have been given consequential permissible benefits.

From the general circular No.10 which was issued on 10th March, 1960 for the purpose of fixation of seniority and pay on promotion according to final gradation list, it is clear that seniority and initial pay was required to be fixed by the State Government on promotion according to final gradation list though arrears prior to the date of actual promotion were not required to be paid. It appears that after revising the seniority of the petitioner to his correct position at serial No. 138A in the Bombay Medical Service Class III

as on 1.11.1956, the State of Maharashtra did not take the consequential decision of considering him for promotion as on the date on which his immediate junior came to be promoted to the Class II post. There is no explanation forthcoming from the State of Maharashtra for this inaction on its part. It is therefore, directed that the State of Maharashtra should consider the case of the petitioner Dr. Ravishankar C. Mankad (since deceased) for assigning him a deemed date of promotion in the Bombay Medical Service Class II post on the basis of his revised seniority position at serial No. 138A, which was given to him by order dated 1.9.1970 by the State of Maharashtra in the gradation list of Bombay Medical Service Class III as on 1.11.1956. A decision should be taken by the State of Maharashtra in this regard within four weeks of receiving the writ of this Court and the decision should be communicated to the widow of the petitioner at the address given in the petition. The communication of the decision will also be sent to the State of Gujarat simultaneously. On the communication being received by the State of Gujarat, the State of Gujarat will review the matter to ascertain whatever benefits of promotion etc. were admissible on the basis of that decision of the State of Maharashtra to the petitioner during his service in the State of Gujarat. If any benefits are found to be admissible, then the State of Gujarat should issue appropriate orders within eight weeks after the decision of the State of Maharashtra is communicated to them. The decision that may be taken, will be communicated by the State of Gujarat to the widow of the petitioner at the earliest on the address given in the petition. Rule is made absolute accordingly with no order as to costs.
